



**Upper Tribunal  
(Immigration and Asylum Chamber)**

Appeal Numbers: VA/05064/2014  
VA/05066/2014

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 20 November 2015**

**Decision & Reasons Promulgated  
On 26 November 2015**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE SHERIDAN**

**Between**

**ENTRY CLEARANCE OFFICER - ABU DHABI**

Appellant

and

**NAZAR AHMAD CHAUDHRY  
SAEEDA NAZAR CHOUDHARY  
(NO ANONYMITY ORDER MADE)**

Respondents

**Representation**

For the Appellant: Mr S. Staunton, Senior Home Office Presenting Officer

For the Respondents: Mr N Bajwa, Counsel

**DECISION AND REASONS**

1. The first respondent is a citizen of Pakistan born on 1 January 1959. The second respondent is his wife, born on 14 October 1966. In this decision I will refer to the respondents as “the claimants”.
2. In a decision promulgated on 18 May 2015, First-tier Tribunal (“FtT”) Judge Wyman allowed the claimants’ appeals against the decision of the

appellant (hereinafter “the ECO”) to refuse their application for a visa to visit the United Kingdom for 40 days.

3. The reason the claimants wanted to visit to the UK, as represented to the ECO, was that on 27 May 2014 the second claimant’s grandmother died and they wished to participate in the prayers following her death. In refusing the claimants’ application, the ECO gave multiple reasons as to why it was not accepted that the claimants satisfied the requirements of paragraph 41 of the Immigration Rules. The ECO was not satisfied that the claimants were genuinely seeking entry as visitors and intended to leave (paragraphs 41(i) and (ii)); that they would be able to accommodated themselves without employment or resource to public funds (paragraph 41(vi)); or that they could meet the cost of an onward journey (paragraph 41(vii)).
4. The claimants appealed and their appeal was heard by FtT Judge Wyman. The FtT considered the evidence before it pertaining to the circumstances of the claimants and concluded that they were genuine visitors who would return to Pakistan after the proposed visit and satisfied the requirements of paragraph 41 of the Immigration Rules.
5. Having made a finding with respect to the Immigration Rules, the FtT gave only brief consideration to Article 8 of the ECHR. The entirety of its analysis is contained in paragraph [43], which I set out in full:

“43. Turning briefly to Article 8, I note the appellant wished to come to the UK for a family funeral. However I am not satisfied that the refusal of leave is justified for the purposes of maintaining effective immigration control or is proportionate”
6. The FtT then allowed the appeal under the Immigration Rules and under Article 8 of the ECHR.
7. Under Section 52 of the Crime and Courts Act 2013, appeals against refusal of a family visit visa applied for on or after 25 June 2013 may be brought only on human rights grounds. The FtT was not therefore entitled to decide the appeal under the Immigration Rules and to do so was an error of law. That error was not material, however, as the FtT also allowed the appeal under Article 8, which it was entitled to do. The issue before me at the error of law hearing was whether the FtT made an error of law in respect of its assessment under Article 8.
8. The ECO’s argument, as set out in the grounds of appeal and made by Mr Staunton at the hearing, was that the FtT failed to take into consideration that the claimed family life was between adults and that family life, within the meaning of Article 8, will not normally exist in such circumstances in the absence of dependency. In this case, there was no evidence of dependency or anything beyond normal emotional ties. Following *MS (Article 8 – Family Life) Uganda* [2004] UKIAT 00064 and other established case law, the FtT should have recognised that Article 8 was not engaged.

9. The argument was also made that the FtT had erred by using Article 8 as a general dispensing power: having found the Rules were satisfied it then, without any further analysis, concluded that Article 8 applied. However, as made clear in *Adjei (visit visas - Article 8)* [2015] UKUT 0261 (IAC), a person who satisfies the Tribunal that he meets the requirements of paragraph 41 does not succeed on that account and must also demonstrate that refusal of entry represents an unlawful infringement of rights protected by Article 8.
10. Mr Bajwa argued that the brevity of the FtT's consideration of Article 8 did not mean it was not given proper consideration. He submitted that *Adjei* should be distinguished from the present case. It concerned a visit to living relatives whereas this appeal is about attendance at a funeral. Mr Bajwa maintained that a funeral is a matter of great importance in family life that engages Article 8.
11. Having heard submissions I invited the parties to comment on the recent Upper Tribunal decision *Abbasi and another (visits - bereavement - Article 8)* [2015] UKUT 00463 (IAC). Both declined to do so.

#### Error of law

12. Failure to give reasons for a finding on a material matter is an error of law and in this case the FtT allowed the appeal under Article 8 without giving any reasons for so doing. No reason is given as to why Article 8 was found to be engaged (indeed, there is no explicit finding that it is engaged - this just appears to be assumed). Nor is a reason given as to why refusal of leave to enter the UK would be a disproportionate interference with the claimants' rights under Article 8. Accordingly, I find that the FtT made a material error of law such that the decision must be set aside and remade.

#### The FtT's Decision Remade

13. This is a case in which the claimants wish to visit the UK for a relatively short period of time for the specific and defined purpose of saying prayers and participating in religious ceremonies following the death of their grandmother.
14. The issue before me is whether refusing the claimants entry is in breach of the UK's obligations under Article 8 of the ECHR. In considering Article 8 I follow the structured sequential approach adopted in *Razgar v SSHD*.
15. The first question is whether an entry visa for the specific purpose of saying prayers for the claimants' grandmother for a time limited period of 40 days falls within the scope of, and is protected by, Article 8. As was made clear in *Adjei*, many visitor visa appeals, particularly those involving adult relatives (other than a husband and wife), fall outside the scope of Article 8. The present case is not however about visiting an adult relative but about entering the UK for a specific and time limited purpose to engage in a particular activity that cannot reasonably be undertaken

outside the UK; that is, participation in prayers following the death of a relative in the location of that relative's death. This issue was recently considered by the Upper Tribunal in *Abbasi and another*, which concerned a proposed visit by nationals of Pakistan to their grandfather's grave. Having considered a number of decisions by the European Court of Human Rights, the President of the Upper Tribunal McCloskey J concluded that the circumstances in that case fell within the ambit of Article 8. At paragraph [11] he stated:

"As the decided cases of the ECtHR make clear, the FtT's decision that the Appellants' appeals did not fall within the ambit of Article 8 ECHR is unsustainable. The Judge's error was driven by an impermissibly narrow approach to the scope of Article 8 protection and a concentration on the Appellants' family life in Pakistan, to the exclusion of both their family ties in the United Kingdom and the central purpose of their proposed visit. The essence of the error was a failure to recognise that the particular aspect of private and family life invoked by the Appellants was capable of being encompassed by Article 8 ECHR. The protection, or benefit, which they were asserting had the potential of being protected by Article 8 ECHR. The first question for the Judge should have been whether, having regard to all relevant facts and circumstances, it was. The Judge's error was committed at this preliminary stage. It consisted of a failure to recognise that the Appellants were asserting a discrete facet of family and private life which Article 8 is capable of protecting. In consequence of this error of law the Judge did not proceed to consider any of the succeeding stages of the exercise, namely interference, legitimate aim and proportionality."

16. Following the approach taken in *Abbasi*, I find that the claimants are asserting a facet of family life that Article 8(1) ECHR is capable of protecting and that this appeal falls within the ambit of Article 8. The decision of the ECO to refuse entry to the claimants, thereby preventing them from attending prayers in relation to their grandmother's death, constitutes an interference with their family and private life rights. These are rights that cannot reasonably be realised in an alternative way (they necessarily require attendance at the location of the deceased's death) and accordingly the gravity of the interference with the claimants' rights is such as to engage Article 8.
17. In assessing whether refusing the claimants an entry visa is proportionate, my starting point is to consider whether the claimants are able to satisfy the Immigration Rules. In *Adjei*, the Upper Tribunal stated that "*for a person who does not satisfy the requirements of paragraph 41 to succeed in an appeal there would have to be cogent and compelling reasons.*"
18. I am satisfied that the claimants meet the requirements of the Immigration Rules. Under Paragraphs 41(i) and (ii) of the Rules the claimants must be genuinely seeking entry as general visitors for less than 6 months and intend to leave the UK at the conclusion of their visit. I am satisfied that, on the balance of probabilities, the evidence supports the genuineness of their application. The first claimant has provided documentary evidence showing a strong social and economic tie to Pakistan including ownership of a business, land, shares and a car. There is also evidence of savings and

a not insignificant income in Pakistan. Further, the claimants have two dependent children the youngest of which is April 2004. There is no indication that they intend to abandon these children. Moreover, the application was made shortly after their relative in the UK died, which reinforces that the purpose of the trip is as they have claimed.

19. Under paragraphs 41(vi) and (vii) of the Rules the claimants must be able to accommodate and maintain themselves whilst in the UK and meet the cost of their onward journey. The evidence of their financial situation, along with that of their sponsor who proposes to accommodate them, satisfies me - as it did the FtT - that these requirements can be met.
20. I now turn to Section 117B of the Nationality, Immigration and Asylum Act 2002 and the mandatory factors to consider therein. Section 117B(1) stipulates that the maintenance of effective immigration controls is in the public interest. Given my finding that the claimants meet the requirements of paragraph 41 of the Immigration Rules, the public interest in effective immigration controls under paragraph 117B(1) cannot be said to be advanced by refusing them entry. Section 117B(2) is of little significance in this appeal - the ability to speak English is not an important public interest with respect to a visitor staying in the UK for only 40 days. Section 117B(3) does not arise as my findings in relation to Paragraph 41 include a finding that the claimants will receive maintenance and accommodation during their visit from family.
21. Having found that the claimants meet the requirements of the Immigration Rules there is no (or very little) public interest in denying them entry as visitors. Weighed against this is that refusing them entry will result in a substantial interference with their rights under Article 8 in the form of denying them the opportunity to participate in an important family activity that cannot realistically take place outside of the UK. Balancing this interference against the public interest, it is clear that refusal of entry represents a disproportionate interference with the claimants' right to respect for private and family life in breach of Article 8.

### **Decision**

- a. The decision of the FtT is set aside.
- b. I remake the decision and allow the claimants' appeals.
- c. No anonymity order is made.

Signed



Deputy Upper Tribunal Judge Sheridan

Dated: 23 November 2015